

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Ohio Public Library Information Network)	File No. SLD-165640
Columbus, Ohio)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: February 25, 2002

Released: February 26, 2002

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by Ohio Public Library Information Network (Ohio PLIN), Columbus, Ohio.¹ Ohio PLIN seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying one of Ohio PLIN's Funding Year 3 requests for discounts under the schools and libraries universal service mechanism.² For the reasons set forth below, we deny the Request for Review and affirm SLD's decision.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.⁴ Once the applicant has

¹ Letter from Carol Lynne Roddy, Ohio Public Library Information Network, to Federal Communications Commission, filed April 18, 2001 (Request for Review).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504 (b)(1), (b)(3).

complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carriers with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵

3. In the *Fifth Reconsideration Order*, the Commission established rules to govern how discounts would be allocated when total demand exceeds the amount of funds available and a filing window is in effect.⁶ These rules provide that requests for telecommunications and Internet access service for all discount categories shall receive first priority for available funds (Priority One services), and requests for internal connections shall receive second priority (Priority Two services).⁷ Thus, when total demand exceeds the total support available, SLD is directed to give first priority for available funding to telecommunications service and Internet access.⁸ Any funding remaining is allocated to requests for support for internal connections, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix.⁹ Schools and libraries eligible for a 90 percent discount would receive first priority for the remaining funds, which would be applied to their request for internal connections. To the extent that funds remain, the Administrator would continue to allocate funds for discounts to eligible applicants at each descending single discount percentage, e.g., eighty-nine percent, eighty-eight percent, and so on until there are no funds remaining.¹⁰ In Funding Year 3, funding of discounted internal connections was available only for schools with discount rates of 82% or higher.¹¹

4. In Funding Year 3, in an effort to ensure that the priority rules were not violated, SLD implemented a review procedure of reclassifying a request that the applicant designated telecommunications or Internet access (Priority One) as one seeking Priority Two services if any portion of the services requested were found to be Priority Two.¹² Absent such a procedure,

⁵ 47 C.F.R. § 54.504(c).

⁶ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14915 (1998) (*Fifth Order on Reconsideration*).

⁷ 47 C.F.R. §§ 54.502, 54.503.

⁸ The annual cap on federal universal service support for schools and libraries is \$2.25 billion per funding year. See 47 C.F.R. § 54.507(a).

⁹ *Fifth Order on Reconsideration*, 13 FCC Rcd at 14938, para. 36.

¹⁰ 47 C.F.R. § 54.507(g)(1)(iii).

¹¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rule Making and Order, 16 FCC Rcd 9880, n.13 (2001) (*Further Notice of Proposed Rulemaking*).

¹² See SLD Web Site, <http://www.sl.universalservice.org/reference/471_App_Guid_Docs/471_dozen.asp> (last updated April 15, 1999) ("To correctly apply the Rules of Priority (fund Telecommunications and Internet Access first, then Internal Connections beginning with neediest), SLD must 'scrub' telecommunications and Internet Access requests to assure no Internal Connections are included. A piece of equipment at the user's location listed in one of these categories risks having the entire service redefined as Internal Connections."); see also SLD Web Site,

SLD would be unable to act on funding requests that mixed Priority One and Priority Two services until Priority Two availability could be determined with certainty. This, in turn, would create a substantial backlog of application reviews late in the Funding Year 3 application review period, potentially causing funding delays injurious to applicants.¹³ The Common Carrier Bureau has previously found this SLD operating procedure for evaluating mixed priority requests to be a reasonable exercise of its authority.¹⁴ Accordingly, we continue to affirm the practice here.

5. At issue is Funding Request Number (FRN) 399128 of Ohio PLIN's Funding Year 3 application, which sought discounted Internet access at a discount rate of 53 percent.¹⁵ During its application review of FRN 399128, however, SLD characterized the request as one seeking internal connections, and on September 15, 2000, it denied the request on the grounds that the "[f]unding cap will not provide for [less than] 81% discount to be funded."¹⁶ Ohio PLIN appealed to SLD, asserting that the service was incorrectly categorized as internal connections.¹⁷ SLD denied the appeal, stating that the requested services included some internal connections, specifically, upgrades to routers owned by the libraries.¹⁸ SLD stated that library ownership of the routers was verified by Jahn Jones, Administrative Coordinator for Ohio PLIN, in a telephone contact on August 31, 2000.¹⁹ SLD found that, because FRN 399128 included some internal connections services, it was properly recategorized as internal connections.²⁰ SLD concluded that Ohio PLIN was not eligible for discounts on internal connections because it did

<<http://www.sl.universalservice.org/reference/ServCategories.asp>> (describing review procedure used in Funding Year 3 and new procedure applied in Funding Year 4).

¹³ See SLD Web Site, <<http://www.sl.universalservice.org/reference/ServCategories.asp>> ("While some applicants might prefer to wait until they know for sure whether funding will be sufficient to fund Internal Connections . . . SLD must process tens of thousands of applications and cannot leave these decisions until the end and still meet its goal of notifying applicants of the decisions on their requests before the start of the fund year.").

¹⁴ *Request for Review by Most Holy Trinity, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-161422, CC Dockets No. 96-45 and 97-21, Order, DA 01-2456 (Com. Car. Bur. rel. October 22, 2001). We note that, while the application of this procedure leads to a denial of funding in this instance, that result could have been avoided by submitting two separate funding requests, one for the Priority One services, and the second for the Priority Two services.

¹⁵ FCC Form 471, Ohio Public Library Information Network, filed January 19, 2000 (Ohio PLIN FCC Form 471), at 25-26.

¹⁶ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jahn Jones, Ohio Public Library Information Network, dated September 15, 2000, at 5.

¹⁷ Letter from Carol Lynne Roddy, Ohio Public Library Information Network, to Schools and Libraries Division, Universal Service Administrative Company, filed October 10, 2000, at 1.

¹⁸ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Carol Lynne Roddy, Ohio Public Library Information Network, dated March 27, 2001 (Administrator's Decision on Appeal), at 1; see also SLD website, Eligible Services List, <<http://www.sl.universalservice.org/reference/eligible.asp>>.

¹⁹ *Id.*

²⁰ *Id.*

not have a sufficiently high discount rate.²¹ Ohio PLIN then filed the pending Request for Review.

6. In its Request for Review, Ohio PLIN asserts that FRN 399128 contains no internal connections services.²² It does not deny that the request includes costs for the maintenance of routers, but asserts that the routers are owned by the vendor, and are supplied to the libraries for only so long as they receive service from the vendor.²³ Ohio PLIN further asserts that Ms. Jones does not recall being contacted by SLD regarding ownership of the routers, and that she would never have said that they were owned by the libraries, because she is “well aware” that the libraries do not own the routers.²⁴

7. On review of the record, however, we find that SLD contacted Jahn Jones regarding ownership of the routers and was informed that the routers were owned by the libraries.²⁵ This contact and its results were noted down in the log of the Program Integrity Assurance (PIA) reviewer who made the contact, along with the time and date of the contact.²⁶ Based on this finding, we conclude that SLD had a reasonable basis for concluding that the routers were owned by the libraries and that maintenance of the routers constituted internal connections services.

8. Ohio PLIN has offered evidence with its Request for Review in support of its assertion that the routers are owned by the service vendor.²⁷ However, we do not accept new evidence from an applicant on appeal to correct information it provided to SLD during SLD’s application review.²⁸ Because Ohio PLIN informed SLD during PIA review that the routers were library-owned, it may not submit evidence to the contrary now.

9. As noted above, in Funding Year 3, where a funding request included some internal connections services, SLD categorized the entire request as seeking internal connections.²⁹ Here, FRN 399128 included internal connections, specifically the maintenance of

²¹ *Id.*

²² Request for Review, at 1.

²³ *Id.*

²⁴ *Id.* at 1-2.

²⁵ Administrator’s Decision on Appeal, at 1; Universal Service Administrative Company, Schools and Libraries Division, PIA Review Contact Report, Ohio Public Library Information Network, May 22, 2000 (PIA Review Contact Report) (recording August 31, 2000 phone contact with Jahn Jones, who informed SLD that the routers are owned by the libraries).

²⁶ PIA Review Contact Report.

²⁷ Request for Review, Attachment.

²⁸ *Request for Review by Richland Parish School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-127412, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 15871, para. 7 (Com. Car. Bur. 2001).

²⁹ *See supra*, para. 4.

library-owned routers.³⁰ Thus, SLD properly categorized the request as internal connections. In Funding Year 3, only applicants with a discount rate of at least 82% were entitled to discounted internal connections.³¹ Because Ohio PLIN was entitled to a discount of only 53%, we conclude that SLD correctly denied FRN 399128.³²

10. ACCORDINGLY, IT IS HEREBY ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Ohio Public Library Information Network, Columbus, Ohio, on April 18, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau

³⁰ *See supra*, paras. 6-7.

³¹ *See supra*, para. 3.

³² Ohio FCC Form 471, at 25-26.